

29.01.2021.
Item No. 12

S.A.T. 233 of 2018
with
C.A.N. 1 of 2020 (Old No. C.A.N. 1057 of 2020)

Smt. Mono Debi (Shaw)
Vs.
Sri Jitendra Shaw and others.

Mr. Buddhadeb Ghosal,
Mr. Jayanta Kumar Dutta,
Mr. S. S. Banik.

... for the appellants.

Mr. Alok Kumar Biswas,
Mr. Abhishek Biswas.

... for the respondent no. 1.

A defeating litigant is taking shelter on the point of jurisdiction and/or competence of the court to entertain the suit, which was allegedly undervalued.

The plaintiff/appellant could not succeed in both the courts below in getting rid of the registered deed of gift executed by him and has taken a point before us that value of relief claimed in the suit ought to have been on the basis of the value of the property, when the declaration for rendering the said deed void is claimed in the plaint. The impetus to such point appears from an observation of the trial court on the court fees to be paid on the basis of the relief claimed in the plaint.

The learned Advocate for the appellants submits that once the court finds that the suit is undervalued and the proper court fees has not been paid, there is no course open to the court but to reject the plaint under the provision of Order VII Rule 11(b) of the Code of Civil Procedure.

What is sought to be projected before us is that the court could not have proceeded on merit of the case but should have squeezed itself within the contour of the provision relating to the rejection of the plaint. The fact remains that the moment the trial court dismissed the suit, an appeal was immediately preferred; meaning thereby the appellant felt aggrieved on the findings recorded on the valuation of the relief and non-payment of the court fees.

A chance was taken before the appellate court to have such findings set aside but the moment the appellate court proceeded to decide the matter on merit as well, the plaintiff/appellant has taken reverse drift and banking upon the findings of the trial court, as if the same was correctly made with a view to avoid the decision rendered by the court on merit. Once the plaintiff/appellant chose to value the relief claimed in the plaint and filed the same before the court competent thereof to entertain it, it is not open for the plaintiff/appellant to blow hot and cold or attempting to avoid the decision on merit so that the same cause of action can be re-agitated in a second round of litigation. We do not think that it is proper and appropriate for the plaintiff/appellant to take such point as substantial question of law for the first time before this Court.

Reverting to the merit of the case, the appellate court has recorded its finding that though the plaintiff has filed a suit for declaration that the registered deed of gift is void having obtained by practicing fraud, misrepresentation and coercion etc. but did not come forward to adduce evidence himself.

It is apparent from the findings recorded by the appellate court that the constituted Attorney of the donor appeared and adduced evidence in the case. If the deed is apparently executed by the donor herself

and the challenge is thrown on the ground of fraud, misrepresentation and coercion, the same is within the special knowledge of the executant. The evidence cannot be adduced by a constituted Attorney unless he is aware of such special knowledge or the events and/or the incidents touching upon the very decision and execution of the document. It is further evident from the evidence that the said deed was registered at the residence, as the plaintiff no. 1 was not in a position to visit the registration office and formalities and procedure required therefor were duly followed.

Once the document is registered with the registering authority, it raises a presumption of its due execution and if anyone wanted to get away with the said document, the strong evidence rebutting the presumption should be adduced.

Since such presumption was not rebutted nor convincing evidence and/or materials were produced before the court, we do not find any difficulty in returning the finding on merit of the case. Furthermore, the appellate court enjoys all the powers of the trial court under Section 107 of the Code of Civil Procedure and being the last court of fact and law, there is no impropriety to decide the matter on merit as well.

After all a litigation must reached to its finality and should not be allowed to remain in lurch keeping the parties thereto in swinging pendulum and inviting further litigation.

We, thus, do not find any substantial question of law involved in the instant appeal and the same is hereby dismissed.

In view of the dismissal of the appeal itself, the connected application being C.A.N. 1 of 2020 (Old No. C.A.N. 1057 of 2020) has become infructuous and the same is also dismissed.

There shall, however, be no order as to costs.

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(Harish Tandon, J.)

(Kausik Chanda, J.)